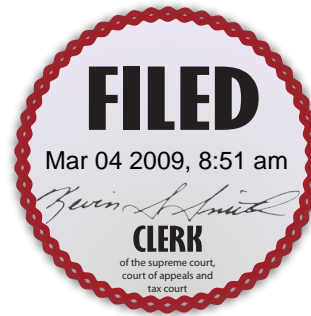


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

WILLIE L. JOSEPH,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A04-0806-CR-347

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Heather Welch, Judge
Cause No. 49F09-0801-FD-26223

March 4, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Willie L. Joseph, after a bench trial, appeals his conviction for criminal trespass,¹ as a class A misdemeanor.

We affirm.

ISSUE

Whether sufficient evidence exists to support his conviction.

FACTS

On January 28, 2008, as store manager Brent Lankford was stocking shelves at the downtown Indianapolis CVS pharmacy, he overheard a man apparently talking to himself in the adjacent aisle. Lankford investigated and observed a man – later identified as Joseph – “crouched down, squatted, facing [the] shelves” holding an item of deodorant and \$5.00 in one hand, and another deodorant in the other hand. (Tr. 7). Lankford asked whether Joseph required assistance. Joseph asked whether he could buy both deodorants for \$5.00; Lankford told him that he could buy only one deodorant for that amount.

Afterwards, Lankford resumed stocking, while maintaining visual contact with Joseph. Joseph approached Lankford, still holding the two deodorants, but as he stepped behind Lankford, he emerged holding only one deodorant. When Lankford asked Joseph to produce the second deodorant, Joseph, who appeared to be impaired, dropped the deodorant. As Joseph bent down to pick up the deodorant from the floor, Lankford saw the second deodorant partially concealed inside his jacket. Lankford then picked up the

¹ Indiana Code § 35-43-2-2.

deodorant from the floor, removed the second deodorant from Joseph's jacket, and asked Joseph to accompany him to the front of the store.

At the front of the store, Joseph demanded the deodorant back. When Lankford refused, Joseph demanded "[his] five dollars [back]." (Tr. 9). Lankford responded that he had not taken Joseph's money. Joseph "grabb[ed] at" Lankford's arm repeatedly in an apparent effort to regain the deodorant. (Tr. 9). When Lankford placed the deodorants out of reach behind the counter, Joseph became belligerent, "threatening," and pushed Lankford. (Tr. 28). Store pharmacist John Barton approached to assist Lankford. Upon seeing Barton approaching, Joseph began to walk toward the store's entrance. Barton followed and told Joseph that he was no longer welcome on the premises; Joseph left, but vowed to return. Lankford told the cashier to call the police and to alert him if Joseph returned.

Approximately twenty minutes later, Joseph returned to the store. The cashier screamed at him to leave, but Joseph ignored her and walked into an aisle, where he "start[ed] knocking merchandise and product[s] off the shelves." (Tr. 12). The cashier telephoned the police. Lankford heard the commotion and approached, along with Barton, who chased Joseph to the front of the store. Joseph stepped just beyond the threshold of the store and turned to face Barton. Joseph was unsteady on his feet. He swayed, and exposed a deodorant concealed inside his jacket. Barton removed the deodorant from Joseph's jacket and tossed it to Lankford.²

² A subsequent inventory count indicated that the item belonged to the store.

Joseph lunged to “get at” Lankford. (Tr. 14). Barton prevented Joseph from reaching Lankford. Barton and Joseph wrestled on the floor. As they wrestled, Lankford saw that Joseph was attempting to gain possession of a knife on the floor. Lankford placed his weight on Joseph’s arm to prevent him from getting the knife. Joseph managed to get the knife and left the store with it in his hand. He was captured on videotape by CVS’s surveillance monitoring system with the knife in his possession.

Joseph ran toward the Circle Center Mall, with Barton following close behind him. Joseph entered the mall and “start[ed] knocking stuff off [a store] counter.” (Tr. 52). Barton informed store employees that Joseph had a knife and told them to call the police. Joseph exited the store and ran toward an escalator. Before Joseph could get on the escalator, Barton tackled him to the floor and held him until the police arrived.

Indianapolis Metropolitan Police Department (IMPD) officers Ted Sadownik and David Banta responded to the scene. Officer Sadownik instructed Barton to release Joseph. Barton complied. Joseph vigorously resisted Officer Sadownik’s efforts to handcuff him, and refused to place his hands behind his back. After Officer Sadownik handcuffed Joseph, he refused to stand and had to be forcibly lifted to his feet. At one point, he jerked away from Officer Sadownik, lunged at Barton, and had to be restrained. As he was transported through the mall, he was “kickin[g], yellin[g], screamin[g]” and he tried to kick in the glass doors at the mall’s entrance. (Tr. 64). The knife was not recovered.

On January 30, 2008, the State charged Joseph with two counts of class D felony criminal recklessness; one count of class D felony theft; one count of class D felony

resisting law enforcement; and one count of class A misdemeanor criminal recklessness. He waived trial by jury and was tried before the bench in a bifurcated trial commencing on April 8, 2008, and continuing on April 15, 2008.

At trial, Lankford, Barton, and Officers Sadownik and Banta testified to the foregoing facts. The State also introduced into evidence a videotape depicting portions of the altercation at CVS. In one frame, Joseph was seen leaving the store holding a knife in his right hand.

Joseph testified in his own defense. He testified that after giving a CVS employee – not Lankford – \$20.00 to pay for the deodorant, he was abruptly told to leave the store. He testified that he left peacefully of his own volition and denied being told that he was no longer welcome on the premises. Joseph also testified that he returned for his money because he had paid for merchandise that he never received. He testified that when he returned, Lankford grabbed him “and. . . tr[ie]d to stuff something down [his] shirt.” (Tr. 100). He testified further that he did not steal anything, and that Lankford and Barton threw him to the floor without provocation and “jumped on” him. (Tr. 102). He denied bringing a knife into the store. After being shown a video image from the store’s surveillance system which showed him carrying a knife as he left the store, Joseph testified that the video was not correct.

After the close of the evidence, the trial court found Joseph guilty as charged. The trial court conducted a sentencing hearing on May 13, 2008, and imposed sentence as follows: for the two criminal recklessness convictions, three years, concurrently; for the theft conviction, three years, concurrently; for the criminal trespass conviction, three

years, concurrently; and for resisting law enforcement, one year, to be served consecutively to the other sentences, for an aggregate sentence of four years. Joseph now appeals.

DECISION

Joseph contends that the evidence is insufficient to support his conviction for criminal trespass. We must affirm a conviction unless no reasonable fact-finder could have found the evidence proved the defendant's guilt beyond a reasonable doubt. *Winn v. State*, 748 N.E.2d 352, 357 (Ind. 2001). When making our determination, we must view the evidence and the inferences therefrom in the light most favorable to the judgment, and we may neither reweigh the evidence nor reassess the credibility of the witnesses. *Id.*

The aim of the criminal trespass statute is “to punish those who willfully or without a *bona fide* claim of right commit acts of trespass on the land of another.” *Woods v. State*, 703 N.E.2d 1115, 1117 (Ind. Ct. App. 1998). “A person who ... not having a contractual interest in the property, knowingly or intentionally refuses to leave the real property of another person after having been asked to leave by the other person or that person's agent ... commits criminal trespass, a Class A misdemeanor.” I.C. § 35-43-2-2. Thus, in order to sustain a conviction for criminal trespass as a class A misdemeanor, the State was required to prove that Joseph (1) did not have a contractual interest in the property; and (2) he knowingly or intentionally refused to leave the real property of another person; (3) after having been asked to leave by the other person's agent. *Taylor v. State*, 836 N.E.2d 1024, 1026 (Ind. Ct. App. 2005). Joseph's argument pertains solely to the first element.

Joseph contends that the State failed to prove that he lacked a contractual interest in CVS's property and that "[e]ven if an inference sufficient to prove this element . . . can be drawn," he still had a fair and reasonable belief that he had a right to be in the store to recover his money from the employee. Joseph's Br. at 11. We disagree.

A "contractual interest," as the term is used in the criminal trespass statute, "refers to the right to be present on another's property, arising out of an agreement between at least two parties that creates an obligation to do or not to do a particular thing." *A.E.B. v. State*, 756 N.E.2d 536, 540 (Ind. Ct. App. 2001) (relying on *Woods*, 703 N.E.2d at 1117).

Here, there is no support in the record for finding that Joseph and CVS had an agreement that would create "an obligation to do or refrain from doing a particular thing." *A.E.B.*, 756 N.E.2d at 540. Moreover, the trial court could reasonably have inferred from the evidence that Joseph lacked a contractual interest in CVS's property. Upon Joseph's initial entry into CVS, he could properly be characterized as a business invitee; however, he lost that status due to his combative behavior and attempts to steal merchandise. *See Olsen v. State*, 663 N.E.2d 1194, 1196 (Ind. Ct. App. 1996) (holding that a defendant who disrupted business operations in the public lobby of a hotel, did not have a contractual interest in the lobby, but rather was "an invitee whose invitation had been revoked").

Inasmuch as Joseph contends that he returned to CVS believing that he was entitled to reclaim money that he had given to a store employee, we are not persuaded. Here, the record reveals that after Joseph tried to steal the store's merchandise and pushed Lankford; he was told, in no uncertain terms, to leave the store and that he was no

longer welcome on the premises. Thus, Joseph's argument is nothing more than a request that we reweigh the evidence in his favor; this we cannot do.

The evidence is sufficient to support Joseph's conviction.

Affirmed.

RILEY, J., and VAIDIK, J., concur.